

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

vs.

TUSTIN UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2009101194

PARENTS on behalf of STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010020597

ORDER GRANTING REQUEST FOR  
RECONSIDERATION; ORDER  
DENYING MOTION TO  
CONSOLIDATE

On October 20, 2009, the Tustin Unified School District (District) filed a Request for Due Process Hearing (District's complaint) against Student. This matter was designated as OAH Case No. 2009101194.

On January 11, 2010, the Office of Administrative Hearings (OAH) held a Prehearing Conference, which set the dates for hearing regarding the District's complaint for March 2, 3, and 4, 2010. The parties are also scheduled to attend mediation on February 24, 2010.

On February 16, 2010, Student filed a Request for Due Process Hearing (Student's complaint) against the District. This matter was designated as OAH Case No. 2010020597.

On February 18, 2010, OAH issued a Notice of Due Process Hearing, Notice of Mediation, and Prehearing Conference in Student's complaint. This matter is set for mediation on March 30, 2010, Prehearing Conference on April 7, 2010, at 1:30 p.m., and hearing on April 12, 13, 14, 15 and 19, 2010.

On February 16, 2010, Student filed a Motion to Consolidate OAH Case No. 2009101194 with OAH Case No. 2010020597. On February 19, 2010, the District filed an opposition to Student's Motion to Consolidate on the grounds that Student is seeking to delay the hearing on the District's complaint. On February 23, 2010, the undersigned administrative law judge issued an order granting in part and denying part Student's Motion to Consolidate. The Order consolidated the District's complaint and Issues One through

Seven in Student's complaint and set the consolidated matter for hearing for March 2, 3, and 4, 2010. On February 25, 2010, the District filed a motion for reconsideration. Student did not file a response.

### APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

### DISCUSSION

The District alleges new facts, circumstances, and law in support of the request reconsideration because the dates set for the hearing in consolidated matter do not give the District sufficient time to prepare for hearing and for the parties to exchange evidence and witnesses regarding the Student's complaint. Additionally, the District raised the legal issue that the February 25, 2010 order prevents the District from timely raising any legal challenge to Student's complaint. Therefore, the District established good cause for reconsideration of the February 25, 2010 order.

On reconsideration, the above-titled cases do involve a common question of law or fact regarding the appropriateness of District's request to assess Student pursuant to its August 13, 2009 assessment plan. However, Student's complaint contains issues not raised in the District's complaint: whether the District denied Student a free appropriate public education by failing to implement her individualized educational programs (IEPs) and not ensuring that required IEP team members stayed for the entire IEP meetings.

The parties participated in a Prehearing Conference on January 11, 2010, in which OAH granted Student's December 30, 2009 request for a continuance because Student recently obtained legal counsel. The parties, through their legal counsel, agreed to the continued hearing dates at the Prehearing Conference. Student's Motion to Consolidate does not state why Student did not file her complaint sooner after the Prehearing Conference.

While the District's and Student's complaints involve common issues of law and fact, and will have similar evidence and witnesses, judicial economy does not warrant consolidation of the two cases because consolidation would unduly delay the hearing on the District's complaint. Student did not provide any explanation for the delay in filing her complaint after the parties agreed to the hearing dates at the January 11, 2010 Prehearing

Conference. Therefore, Student has not established good cause to consolidate the District's and Student's complaints.

#### ORDERS

1. The District's Motion for Reconsideration is granted.
2. Student's Motion to Consolidate is denied.
3. The Prehearing Conference scheduled for 1:30 p.m. on March 1, 2010, is vacated.
4. The due process hearing in the District's complaint shall proceed on March 2, 3, and 4, 2010, pursuant to the January 11, 2010 Prehearing Conference Order.
5. Student's complaint shall proceed pursuant to the February 18, 2010 scheduling order.

Dated: February 26, 2010

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings